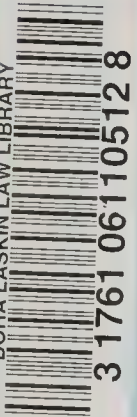




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LABOUR LAW

SPRING 2010

PROFESSOR BRIAN LANGILLE

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LABOUR LAW
SPRING 2010

PROFESSOR BRIAN LANGILLE

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COURSE OUTLINE

SESSION 1
Mon Jan. 4

What is Labour Law?

1. Casebook 1-3, 51-57.

SESSION 2
Wed Jan. 6

The Common Law I

A. Who is an Employee?

1. Casebook 99-100 (note and Kahn-Freund)
2. Casebook 100-106 (Langille and Davidov)
3. Denham v. Midland Mutual (BB)
4. Doyle v. London Life (BB)
5. Massey v. Crown Life (BB)
(Query – how do you reconcile Doyle and Massey?)

B. The Contract of Employment

(a) General

1. MacNeil, “The Many Futures of Contract” pp. 693-696, 720-725. (BB)
2. Greenberg v. Meffert (BB)

(b) Changes

1. Peerless Laundry v. Neal (BB)
2. Hill v. Peter Gorman Casebook 140-41
3. Wronko v. Western Inventory (BB)
4. Braiden v. LA-Z-BOY (BB)
5. KMA Caterers v. Howie (BB)

SESSION 3
Mon Jan. 11

The Common Law II

A. Breach

1. Laws v. London Chronicle (BB)
2. Haldane v. Shelbar (BB)
3. Carscallan v. FRI (BB)

B. Contract and Tort

1. Douglas v. Kinger (BB)

C. Contract and Fiduciary Obligations

1. Felker v. Cunningham (BB)
2. RBC Dominion v. Merrill Lynch (BB)

D. The Implied Term of Reasonable Notice

1. Casebook 118-125, Cronk v. Canadian General Insurance, (including note re: Ont CA decision)
2. Casebook 792-800, Machtinger v. HOJ
3. Casebook 133-138, Ceccol v. Ontario Gymnastic Federation
4. Casebook 130-133, Nardocchio v. CIBC

SESSION 4
Wed Jan. 13

The Common Law III

A. Remedies

1. Casebook 160-168, Wallace v. United Grain Growers (SCC), ***AND DISSENT (BB)***
2. Honda v. Keays (SCC) (BB)
(*Query – does Keays overrule Wallace?*)
3. Evans v. Teamsters (BB)
4. Wronko #2 (BB)

B. Human Rights

1. Christie v. York (BB)
2. Casebook 106-109, Bhaduria v. Seneca College

SESSION 5
Mon Jan. 18

Collective Bargaining - Scope (Who is an Employee?)

A. Introduction

1. Casebook 69-80 (Paul Weiler, Reconcilable Differences)

B. General issue

1. Casebook 210-213 (top) (including Hearst Publications (USSC 1944))
2. OLRA s.1(1)

C. “Dependent Contractors”

1. OLRA s.1(1)
2. Casebook 214-222 (including Winnipeg Free Press)

D. Exclusions

(a) “Rational”

1. OLRA s.1(3)(b)
2. Casebook 237-247 (Children’s Aid Ottawa-Careton)
3. Casebook 253-255 (including Karl Klare article)
4. Corporation of the City of Burnaby (1974, BCLRB, (Weiler)) (BB)

(b) “Irrational”

1. Casebook 256-257 (Bank of Nova Scotia)

E. Trade Unions

1. Smith v. Rhuland (SCC) (BB)
2. Casebook 258-263 (Kubota)

SESSION 6
Wed Jan. 20

“Recognition” and “Unfair Labour Practices”

A. Introduction

1. Casebook 264-267 (“Estevan”)

B. “Motive”

1. OLRA ss. 5, 70, 72
2. Casebook 271-276 (Ducheneau)
3. Casebook 277-283 (Int’l Wallcoverings)
4. CBC v. CLRB (“Goldhawk”) (SCC) (BB)
5. Casebook notes 283-285

C. “The Freeze”

1. OLRA s. 86
2. Casebook 285-290 – including Simpsons at p. 286, Royal Ottawa Health Care at p. 288, and Exchange Parts at p. 290 (*Query - why is this case HERE?*)

SESSION 7
Mon Jan. 25

Unfair Labour Practices II

A. Free Speech

1. Casebook 291-302 (including WALMART)

B. No Solicitation Rules

1. Casebook 302- 309 (including Canada Post)

C. Remedies

1. OLRA s. 96
2. Casebook 309-323 (including National Bank of Canada - both CLRB and SCC)

D. Professional responsibility of Labour Lawyers

1. Casebook 318-322 (LSUC v. Rovet)

SESSION 8
Wed Jan. 27

Bargaining Units and Certification

1. OLRA ss. 7, 8, 9, 10
2. Casebook 328-350 including Metroland 330-335, CIBC Powell River 336-337
3. Casebook CIBC 339-334, National Bank Rimouski 345-346, and 346-350 regarding the “Amon Principle”
4. Casebook 350-358

- SESSION 9
Mon Feb. 1
- The Duty To Bargain**
- A. Content**
1. OLRA s. 17
 2. Casebook 396-416 (including Radio Shack, 400-407, Canada Trustco 407-410, Langille and Macklem 410-414, Royal Oak Mines 414-416).
- B. Scope**
1. Pulp and Paper (BCCRB, Weiler, 1978) (BB)
 2. Casebook 420-428 (including Consolidated Bathurst 423-428).
- SESSION 10
Wed Feb. 3
- A. The Duty To Bargain – Remedies**
1. Casebook 428-434 (Royal Oak Mines)
- B. Economic Conflict I - The Constitutional Issue**
1. Casebook 450-463. (Alberta Reference – “The Trilogy”)
- SESSION 11
Mon Feb. 8
- Economic Conflict II**
- A. What is a Strike? A Lockout?**
1. OLRA s.1(1)
- (a) Strike**
1. Casebook 465-469 (Graham Cable)
 2. Casebook 472-477 (including ILA v. MEA 472-474 and Nelson Crushed Stone 474-475)
- (b) Lockout**
1. Casebook 477- 481 (including Westroc Industries 478-481)
- B. Multiple Fora**
1. Casebook 498-511 (St Anne Nakawic 498-504, National Harbours Board 506-508, Polymer 509-511)
- SESSION 12
Wed Feb. 10
- Economic Conflict III – Picketing**
1. Casebook 514-548 (Harrison v. Carswell 519-521, Industrial Hardwood 521-524, Hersees of Woodstock 524-526, Consolidated Bathurst 526-529, Pepsi-Cola 532-546)
- **** READING WEEK ****
- SESSION 13
Mon Feb. 22
- Economic Conflict IV- Employee Status During a Strike**
1. Casebook 511-513 (Rogers Cable)
 2. Casebook 548-557 (including Royal York 548-550, EPA 551-553, Paul Weiler article 555-557)
 3. Casebook 678-681 (SCC in McGavin Toastmaster)

4. Paccar (SCC) (BB)
5. Neenan Paper (OLRB, 2006) (BB)

SESSION 14
Wed Feb. 24

Arbitration I (The Big Picture)

1. OLRA ss. 48, 49
2. Polymer Corporation (Laskin, arbitrator) (BB)
3. Casebook 575-582 (including Young v. CNR 577-578, Russelsteel (Arthurs) 578-582)
4. Casebook 593-599 (including Metro Toronto and Council of Printing Industries cases 596-599)
5. Casebook 609-614 (Ontario CA in “lights and sirens”)
6. Casebook 624-29 (CNR v. Beatty)

SESSION 15
Mon March 1

Arbitration II (Dismissal and other issues)

A. Dismissal

1. Casebook, Wm. Scott 604-608
2. Casebook, Cook 614-616

B. Powers of arbitrators

1. Casebook, Weber 648-654
2. O’Leary v. NB (BB)
3. Re-read Douglas v. Kinger (session 3)

SESSION 16
Wed March 3

The Duty of Fair Representation and Internal Trade Union Affairs

A. DFR

1. OLRA s.74
2. Casebook 676-678
3. Casebook 685-687 (Steel v. Louisville)
4. Casebook 690-696 (Bukvitch)
5. Casebook 701-706 (Rayonier)

B. Internal Union Affairs

1. Casebook 725-731 (Berry v. Pulley)

SESSION 17
Mon March 8

Employment Standards I

- A. **INTRODUCTION**, Casebook 750-762 (including Roy Adams article 757-762)
- B. **STATUS**, Casebook 763-769 (Becker Milk) and Lian v. J. Crew (Ont Sup Ct) (BB)
- C. **HOURS of WORK**, Casebook 781-789 (including Falconbridge 784-790)
- D. **DISMISSAL**
 1. Casebook 803-816 (including Slaight Communications 805-816)
 2. Re-read HOJ (session 3)

- SESSION 18 **Employment Standards II**
Wed March 10 1. Curtis Products (Langille) (BB)
2. FAIRNESS AT WORK (The Arthurs Report on Federal Labour Standards 2006) chs. 2, 3, 11 (BB)
3. H. Arthurs, "Reconciling Differences Differently" (BB)
- SESSION 19 **Human Rights at Work I**
Mon March 15 1. Casebook 841-852 (SCC in Meiorin)
2. Casebook 890-896 (SCC in CNR "Action Travail")
- Visit of Kaye Joachim*
- SESSION 20 **Human Rights at Work II**
Wed March 17 1. Air Canada (SCC) (BB)
2. McGill Health Centre (SCC) (BB)
3. Casebook 870-878 (SCC in Okanagan School District)
4. Hydro Quebec (SCC) (BB)
- SESSION 21 **International Labour Law I – Global Labour Law (ILO)**
Mon March 22 1. Sen, Development as Freedom 3-53 (BB)
2. ILO "The Rules of the Game" (BB)
3. Langille, "Can We Rely on the ILO?" (BB)
- SESSION 22 **International Labour Law II – The Regional and Non-State Dimensions**
Wed March 24 1. Casebook 972- 1008
- SESSION 23 **PASSOVER – NO CLASS**
Mon March 29
- SESSION 24 **Domestic Labour Law Meets Constitutional Law Meets International Law**
Wed March 31 Reading
1. BC Health (SCC June 2007 (BB)
2. Fraser (Ont. CA Nov 2008) (BB)
3. Toronto Star, Dec. 8/08, p. 7-8, "Foreign Farm Workers Fired and Evicted."
- Visit of Fay Faraday, Jodi Gallagher and Robin Bazu*
- SESSION 25 **REVIEW**
Mon April 5 1. Walmart (SCC, Nov. 2009) (BB)
2. Laskin, "The Labour Junction in Canada: A Caveat" (BB)